

GARISOND.TXT

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1 MONTANA NINETEENTH JUDICIAL DISTRICT COURT

2 LINCOLN COUNTY

3 CAUSE NO. DV-98-132

4

5 DANIEL GARRISON, SR. and
6 CHARLENE GARRISON, husband and
7 wife,

8 Plaintiffs,

9 vs.

10 W.R. GRACE & CO. - CONN., a
11 Connecticut corporation, W.R. GRACE
12 & CO., a Delaware corporation,
13 W.R. GRACE & CO., a/k/a GRACE, an
14 association of business entities,
15 and DOES I-IV,

16 Defendants.

17

18

19 DEPOSITION

20 OF

21 DANIEL GARRISON, SR.

22 On Behalf of the Defendants

23

24

25 Taken at the Venture Motor Inn
443 US Highway 2 West, Libby, Montana
Monday, February 28, 2000
10:30 a.m.

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28 Reported by Connie S. Costanza, CSR, RPR, and Notary
29 Public for the State of Montana, Lake County.

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1 A P P E A R A N C E S

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10 Q. Mr. Garrison, how would you like me to
11 address you during the deposition today?

12 A. How would I like to have you address me?

13 Q. Yeah. What do you want me to call you?

14 A. Oh, just Dan.

15 Q. Dan, have you ever had your deposition
16 taken before?

17 A. No.

18 Q. Let me just run through some ground
19 rules. You've probably already gone through them
20 with John, but just to make sure that you hear them
21 from me. The first one, of course, is that you
22 understand that you're under oath.

23 A. Um-hmm.

24 Q. The second one is, if you could remember
25 to answer audibly to have Connie take down

5

1 everything, so instead of um-hmms or um-ums or head
2 nods, a yes or a no or something audible. Okay?

3 And then the next one is, if you could
4 try to remember and wait until after I finish my
5 question before you begin to answer so that, again,
6 the court reporter can take down everything
7 correctly. If we're talking at the same time she
8 has a heck of a time keeping them separate. Okay?

9 And then the last one, and most
10 important, is that you and I communicate with one
11 another, so if I ask you something that you don't
12 completely understand, please don't be bashful to
13 tell me that and I'll reword it or rephrase it so

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14 that you're confident and I'm confident that you're
15 answering the question that's being asked. Okay?

16 A. Yes.

17 Q. Okay. Dan, in speaking with your
18 counsel, I believe a week or two ago he informed me
19 that you've recently been diagnosed with lung
20 cancer; is that correct?

21 A. Yes.

22 Q. And, Dan, that was Dr. Whitehouse that
23 diagnosed that?

24 A. Yes.

25 Q. John also mentioned that you have to go

6

1 back for another procedure; is that correct?

2 A. Yes.

3 Q. What is the procedure you have to go
4 back for, do you know?

5 A. They're going to put me under and put a
6 scope, some kind of scope inside my lung and then
7 they will determine if there is enough that they can
8 take out to slow down the cancer in the lung or
9 portion of the lung or all of it.

10 Q. I see. So it's to determine whether
11 surgery is an option and see what you can do with
12 surgery?

13 A. Yes.

14 Q. Okay. And do you know, Dan, had you
15 already given a biopsy over there?

16 A. A biopsy consisting of possibly they
17 drained out a tube of fluid out of the lung.

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18 Q. Okay. And then that's what they used to
19 diagnose the lung cancer?

20 A. They said it was full of cancer cells.

21 Q. Dan, when is the procedure that they are
22 going to do that we just talked about, when are you
23 going to have that done?

24 A. When are they going to have it done?

25 Q. Yes.

7

1 A. I go in Tuesday for a pre-op.

2 Q. Tomorrow?

3 A. Yes. And Wednesday at eight o'clock in
4 the morning at the Deaconess Hospital.

5 Q. Do you know, Dan, is that an outpatient
6 procedure? Will you be going home that same day or
7 will you be hospitalized?

8 A. They said I'll be in, if they don't take
9 it out, for three days, but if they take any portion
10 of the lung out, it will run from five to seven
11 days, and if they take the whole lung out it can run
12 up to as high as three weeks.

13 Q. I see. And do you know, Dan, is the
14 lung cancer localized in one of the lungs or is it
15 in both of the lungs? Do you know that at this
16 point?

17 A. We have no proof of it -- at this time of
18 it being in both lungs.

19 Q. So what lung is it in?

20 A. The left one.

21 Q. So there's a possibility that they'll

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22 take your whole left lung out, huh?

23 A. They said when they drained it it was
24 clear full of liquid; it was not even being used.

25 Q. I see. Since they've drained the liquid

8

1 has it been easier to breath?

2 A. For four or five hours afterwards I
3 breathed way better. I drove home from Spokane that
4 afternoon and I kind of enjoyed the trip coming
5 home. I didn't have no pain in my rib cage; my
6 headache went away that I'd had for three months and
7 aspirin didn't even look at it, and my vision was
8 way better. I really enjoyed the trip home compared
9 to going in that morning.

10 Q. Sure. And then presumably it filled up
11 with some more liquid and those symptoms came back,
12 did they?

13 A. I don't know. That was only two and a
14 half weeks ago they drained it.

15 Q. How does it feel now?

16 A. It hurts. Hurted all night long. I've
17 been taking imitation Tylenol.

18 Q. Have all those symptoms come back that
19 you were talking about, like the headache?

20 A. No, no. My head's been perfect --
21 well --

22 Q. And how about, you mentioned your
23 vision, you had been having some problems with your
24 vision?

25 A. Not now. I was wearing these because --

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1 I don't normally wear glass, but after you put them
2 on and read some stuff with them and then you sit
3 around it takes a little while for your eyes to
4 focus back, you know. Get up in the morning, don't
5 put them on and go all day without them never
6 bothered you, but once you put them on then you have
7 to start wearing them for awhile until you get
8 outside and you stretch your eyes out on the
9 mountains or something.

10 Q. Do you always use them for reading,
11 though?

12 A. Yeah, for reading. They're bifocals.
13 When I used to go hunting I would wear glasses early
14 in the morning before daylight, or just as it's
15 breaking daylight, or late in the evening as it's
16 starting to get dark before the season ends. And it
17 does determine whether you're going to shoot a buck
18 or a doe.

19 Q. Sure. Dan, let's talk a little bit
20 about shortness of breath. Now I understand you
21 suffer from shortness of breath?

22 A. Yes.

23 Q. When did you start noticing that you
24 were suffering from shortness of breath?

25 A. Four to five years ago.

□

10

1 Q. So middle '90s? Is that fair?

2 A. Fair enough.

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3 Q. And what types of things do you recall,
4 Dan, that brought that to your attention? What
5 types of things were you doing that you noticed you
6 were starting to suffer from shortness of breath?

7 A. Going up stairs, cutting wood, mowing
8 the lawn, greasing the cars, rolling around under-
9 neath and get out and have to set some place to
10 breathe. I don't know. There's probably a dozen
11 others that you could name. It just goes in every
12 day living experience, you know.

13 Q. You just noticed that you started
14 getting winded?

15 A. Yes. You just have to quit. And up
16 till about two years ago I never even had pain with
17 it, but about two years ago it started having pain
18 with it.

19 Q. Okay. Could you describe the pain for
20 me?

21 A. Well, it's not like you mashed your
22 thumb, you know. It's just a drawing hurt. That's
23 about the size of it. It's kind of like a drawing
24 hurt.

25 Q. Did it hurt more in one part of the day

11

1 versus the other?

2 A. (Witness shakes head no.)

3 Q. And was it kind of constant in your
4 chest area?

5 A. If you considered the time when it would
6 hurt the worst, would be the worst, would be early

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7 in the mornings.

8 Q. That's the time when it would be the
9 worst?

10 A. That would be the worst.

11 Q. Dan, would it be a lot different than
12 when you used to have, say, a real bad chest cold?
13 You know how you can have aches and pains in your
14 chest area. Was it different than that?

15 A. It's absolutely different.

16 Q. Okay. Was it kind of like your chest
17 muscles contracting, you know? You were saying it
18 was kind of a drawing feeling?

19 A. Can I use the doctor's term on it?

20 Q. Sure; whatever you can use.

21 A. She said it seems like after I had these
22 first x-rays over two years ago when the radiologist
23 stated what he thought I had, she said, Dan, when
24 that's happening it's taking back little portions of
25 your lung that has been captured. Now did I say

12

1 that right?

2 Q. Sure. Sure. And this you said you
3 started noticing about two years ago?

4 A. Yeah; the worst. Well, that -- we're
5 talking about when you should be writing. I'm
6 sorry.

7 I was going to correct you. It started
8 that way a little over three years ago.

9 Q. Okay. And over the last three years,
10 Dan, did the pain get progressively worse or has it

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11 kind of stayed the same? How would you describe
12 what it has done over the last three years?

13 A. On the short of winded part, when I get
14 winded the pain has stayed the same, but the
15 coughing has gotten real, real worse, just
16 eventually got bad, and as it got bad it started on
17 circulating more hurt on coughing in my right lung.

18 Q. Okay. So when you would cough, your
19 right lung would start to hurt more.

20 A. Right. I believe she said it's the --
21 where the bronchial tube goes into your lung it
22 shows a gray ring around the base of it, which she
23 said was asbestosis.

24 Q. And that's kind of the area that would
25 hurt when you'd have coughing?

13

1 A. That's the area that hurt the worst.
2 And that does have me bothered a little bit when
3 they're working on my left lung.

4 Q. Sure.

5 A. Now you asked about when this started
6 hurting -- excuse me. But the left lung did not
7 start hurting until just three or four months ago.

8 Q. Okay.

9 A. When I started getting pains in the
10 ribs, in the -- soreness in here and in the middle
11 of my spinal cord in my back, and then right
12 straight in, that's when it started hurting. You
13 asked when it started hurting, that's when it
14 started.

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15 Q. Okay. But the pain in the right side
16 started hurting about three years ago?

17 A. Yes.

18 Q. And putting aside any coughing for just
19 a second, Dan, did the right side pain get worse
20 over the last three years?

21 A. No; no.

22 Q. So it has stayed the same, which is
23 primarily when you've been coughing?

24 A. Yes.

25 Q. So am I getting this right, then, if you

14

1 weren't coughing and you weren't having a coughing
2 fit you weren't having pain in the right side?

3 A. In the right side, none.

4 Q. And then up about three or four months
5 ago you started having pain on the left side. And
6 could you describe that for me? Has it been
7 constant?

8 A. Yes. And especially when you want to
9 sit down, put your shoes on, lay on your left side,
10 lay on your stomach or doing anything with your arms
11 above your head. Is that pretty much clear by that,
12 your question I mean?

13 Q. Um-hmm, it is.

14 Has that caused you problems in sleeping
15 then?

16 A. Oh, yes.

17 Q. Because you can't roll on your left
18 side?

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19 A. Yes. I spend a lot of nights in the
20 last three years in a chair or on the daveno.

21 Q. You seem to be able to sleep a little
22 better that way?

23 A. Yes; with my shoulder and head
24 elevated. Not because of the coughing, but because
25 of the breathing and short of breath. Lay flat on

15

1 your back you get shorter of breath than ever.

2 Q. Dan, when did you start noticing the
3 cough as a fairly consistent cough?

4 A. Four years ago.

5 Q. And did you cough for some time before
6 you started feeling the pain in the right side when
7 you did cough?

8 A. Just, I got to get that in my mind.
9 That was kind of a heavy question. Did I cough
10 before I started noticing the pain, yes.

11 Q. Because the reason I asked you that is
12 you had said that you started feeling pain in the
13 right side about three years ago and then you said
14 you started noticing a constant cough about four
15 years ago.

16 A. Four years ago.

17 Q. Dan, when you cough do you have a
18 productive cough? Do you spit up anything?

19 A. Very little. And the most that ever
20 comes out of my lungs is when I go -- (coughs). I
21 get it in my throat and go -- (coughs). Can you
22 write that down?

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17 A. No, no; never even worked around where
18 there was some.

19 Q. Ever work with tile and floor tile?

20 A. No. I told you I wished I'd have been a
21 carpenter, but I wasn't.

22 Q. How about, you mentioned you did the
23 maintenance on your vehicles. Did you ever do much
24 on brakes?

25 A. No.

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1 Q. Who would usually do your brake work
2 over the years?

3 A. Well, when you're driving for somebody
4 they have transfer brake lining. They come in a
5 box. You take the box, open the box, put your old
6 ones back in the box and send them back and put your
7 new ones on. And I never did get much of that.
8 That's the easy part of it. It's the changing the
9 tire with the bar and tools and the hammer that I
10 got in on, and I did lots of that.

11 Q. But when you were driving truck you
12 didn't do much brake lining work yourself other than
13 replacing it and taking it out of a box?

14 A. Yeah. But they did that. I said that
15 was the easy part. But if you had a flat tire on
16 the inside and you come home, you could work all
17 night fixing a tire to put back on.

18 Q. Well, Dan, I think Connie needs a break.
19 Why don't we just take five or ten minutes, huh?

20 (Short break taken.)
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21 Q. (BY MR. MacDONALD:) Dan, your
22 employment records with W.R. Grace, or I guess it
23 was Zonolite then, indicated that you started in
24 early December of '56 and worked for roughly six
25 weeks and ended in January of '57. Is that your

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1 recollection?

2 A. That's it.

3 Q. And you already told me a little earlier
4 why you started up there. Do you remember who your
5 boss was?

6 A. The first I worked, the shifter boss,
7 the mill boss there was Jack Garrison. Then he went
8 off of nights and went on days. And then I didn't
9 have no boss. C-10 don't have a boss. There's only
10 one man works it, but they got a radio, and the
11 other shifter boss radios on their radio, gets the
12 scale reading -- you're running a belt over a scale
13 all the time -- and gets a scale reading and tells
14 you -- you got two belts. One reads the dry mill,
15 one reads the wet mill. We want a little more
16 number one or number three or number two. And you
17 go back and you cut the one down and put the other
18 one on. So actually your boss is the
19 radio, and whichever boss is in the dry mill or in
20 the wet mill, that's your boss while you're there.
21 I was there six weeks in there.

22 Q. And what actual job was it? Do you
23 remember the title of that job?

24 A. They checked it C-10.

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25 Q. C-10?

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1 A. That's what the paychecks had written on
2 it -- not dry mill, not wet mill, but C-10. And not
3 the mine. I had nothing to do with the mine, you
4 know.

5 Q. And, Dan, do you remember like where you
6 were up there at Zonolite when you were working?
7 Was it in the dry mill?

8 A. No. It was behind both mills, back
9 underneath the bins. Where the mine comes up and
10 dumps into the bins, the ore on the big conveyors
11 dumps in the bins, and I was at the bottom of them
12 bins.

13 Q. And you'd have a radio.

14 A. Yeah; on a post.

15 Q. And did you do this job all the time
16 during that six weeks?

17 A. That's what I did while I was there,
18 yeah. You sweep up.

19 Q. Underneath the bins.

20 A. The spilling around where the bins are
21 feeding and where the belts separate, divider belts
22 and stuff spilled a little. You're always sweeping
23 and cleaning up there. But that's fresh ore; that's
24 not dried. That's fresh ore out of the mine.

25 Q. Fresh ore out of the mine?

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1 A. Yeah.
2 Q. So it was outside?
3 A. No. It's got a shed like this over it,
4 what you'd call a breeze-way.
5 Q. But it wasn't an enclosed place.
6 A. Yeah; it's enclosed, totally enclosed,
7 walls on both sides.
8 Q. Right; on two sides, but not walls on
9 four sides.
10 A. Yeah. But there was a hallway over
11 here, the port side -- you're talking about the port
12 side. There's a long hallway open there. That's
13 where the bins are. All them bins is right here.
14 And the other end's opened where it goes into the
15 wet mill and separates off and goes towards the dry
16 mill, that's open; there's big open doors.
17 Q. So I guess what I'm saying is, then, you
18 have a roof over your head and then there are walls
19 on two sides but not on all four sides.
20 A. Yes.
21 Q. And then you'd be sweeping, cleaning up
22 underneath these bins.
23 A. Yes.
24 Q. And then the radio person would come on
25 and say, Dan, we need more one or more two, and by

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1 virtue of that instruction you would perform some
2 task to change the type of ore that would go on
3 certain conveyor belts?
4 A. Yes. But before that you had to take

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5 the weight the scale was running and you had to give
6 them the weight and they'd tell you then how much
7 more to give them, or less.

8 Q. And when you started off, you start off
9 on day shift?

10 A. Yes.

11 Q. And at that time --

12 A. No -- excuse me. No. Night shift.

13 Q. When you say night, that's not swing,
14 that's graveyard?

15 A. That's swing, not graveyard.

16 Q. So like 3 to 11 at night?

17 A. 4 to 11.

18 Q. And Jack Garrison was your supervisor?

19 A. He's the one that set me up on the job
20 the day I went up there. Then after the first week
21 he wasn't on the radio no more; he was someplace
22 else.

23 Q. Because he went to day shift.

24 A. Day shift or graveyard. He changed
25 shifts.

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1 Q. And were you there underneath the bins
2 by yourself?

3 A. Yes.

4 Q. So there's no one else around working
5 with you?

6 A. Not a sole.

7 Q. Did you know, Dan, that there was
8 asbestos in the minerals that would be dumped into

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9 the bins?

10 A. I never knew what asbestos was, no way,
11 shape, form in the world.

12 Q. Maybe I didn't ask that very
13 accurately. I wasn't asking you if you knew what
14 asbestos was, just did you know there was asbestos
15 in the ore?

16 A. No.

17 Q. Never heard the word asbestos?

18 A. No, never.

19 Q. Did you know what they were doing in the
20 mill, what they were trying to get at in terms of
21 the milling process up there at Zonolite?

22 A. Well, in the dry mill they was drying
23 the ore, in the dry mill they was drying it. And in
24 the wet mill I don't know what they was doing with
25 it. I have no idea in the world how it come out of

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1 there wet. I mean, they had a sediment of some
2 kind, and it must have been separating number one
3 from number two from number three and the rock,
4 because all that dust and rock was in there.

5 Q. Did you know that the milling process
6 was trying to separate the good ore from the bad
7 stuff so they could sell the good ore?

8 A. That's what I knew. And that was what
9 their dry mill was doing. And then they put the wet
10 mill in before I went up there, of course. And
11 that's what the wet mill was doing. They was
12 swirling like a gold panning outfit. I'd never seen

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13 one only on television, but like it swirled.

14 Q. Dan, what do you recall the contaminant
15 mineral being called up there, the stuff that they
16 were trying to separate out of the good ore?

17 A. Well, the one thing they were trying to
18 separate is, get the rock out. And the next thing
19 they did was the separation only on size, on size.
20 I'm not sure whether it was 100 or 200 or 300 or
21 just one, two or three or what, but it was the size
22 of the pebbles of the ore. They're flakes, you
23 know, blue flakes. I can still see them in my
24 sleep, since this has come up, you know. Before for
25 a hundred years it never entered my mind.

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1 Q. And, Dan, but the only word you used for
2 the stuff that they were trying to separate was
3 "rock," that they were separating out the rock?

4 A. Taking out the rock and separating size.

5 Q. Okay.

6 A. Because I believe there is only one
7 grade of ore up there. It's just the different
8 sizes.

9 Q. Was where you worked, Dan, was it very
10 dusty?

11 A. It was dust where it come down out of
12 the bins, out of the zonolite -- well, on a farm
13 they call them elevators, where they put grain in.
14 Well, these here, it was just, to my knowledge, just
15 bin -- bin one, bin two, bin three. And where that
16 spilled down onto the belt, you open it up you'll

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17 spill more onto the belt or shut it down. The dust
18 pours out from it constantly. It's dirty dust.
19 It's pure dirty dust that pours out constantly from
20 it, from the mining.

21 Q. When you first started there up at
22 Zonolite were you given any safety equipment?

23 A. The day I started up there they didn't
24 even tell me to wear a hard hat, and so I didn't.

25 Q. And did you eventually start wearing a

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1 hard hat?

2 A. No; never did. Never said I had to
3 have.

4 Q. So Jack never told you to wear a hard
5 hat or steel-toed boots or anything like that?

6 A. No. Nobody to my knowledge did. A
7 hundred different kind of caps and hats, but no hard
8 hats.

9 Q. Okay. How about a respirator in the
10 dusty areas? Did you ever wear a respirator?

11 A. I wore a respirator when they sent me to
12 sweeping up on the top dry floor. And one of the
13 workers said, Dan, there's some respirators in
14 there. They called me Danny, I'm sorry. Everybody
15 who used to know me called me Danny. Said, Danny,
16 there's some respirator cover masks in there. If
17 you're going up on the top floor why don't you wear
18 one so you'll be able to eat your supper tonight;
19 otherwise there'll be so much mud in your throat you
20 can't eat. Then he said stick a couple in your